

House Bill 22

By: Representatives Keown of the 173rd, Peake of the 137th, Black of the 174th, England of the 108th, and Benton of the 31st

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and telegraph service, so as to provide that calls made by ADAD equipment for the purpose of the solicitation of votes for candidates for public office be included in the state do-not-call list; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and telegraph service, is amended by striking Code Section 46-5-23, relating to the use of automatic dialing and recorded message (ADAD) equipment, and inserting in lieu thereof the following:

"46-5-23.

(a)(1) As used in this Code section, the term 'ADAD equipment' means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating prerecorded messages to the numbers so selected or dialed.

(2) It shall be unlawful for any person to use, to employ or direct another person to use, or to contract for the use of ADAD equipment for the purpose of advertising or offering for sale, lease, rental, or as a gift any goods, services, or property, either real or personal, primarily for personal, family, or household use or for the purpose of conducting polls or soliciting information where:

(A) Consent is not received prior to the initiation of the calls as specified in paragraph (3) of this subsection;

(B) Such use is other than between the hours of 8:00 A.M. and 9:00 P.M.;

1 (C) The ADAD equipment will operate unattended or is not so designed and equipped
2 with an automatic clock and calendar device that it will not operate unattended, even
3 in the event of power failures;

4 (D) Such use involves either the random or sequential dialing of telephone numbers;

5 (E) The telephone number required to be stated in subparagraph (G) of this paragraph
6 is not one which during normal business hours is promptly answered in person by a
7 person who is an agent of the person on whose behalf the automatic calls are made and
8 who is willing and able to provide information concerning the automatic calls;

9 (F) The automatic dialing and recorded message player does not automatically and
10 immediately terminate its connection with any telephone call within ten seconds after
11 the person called fails to give consent for the playing of a recorded message or hangs
12 up his or her telephone;

13 (G) The recorded message fails to state clearly the name and telephone number of the
14 person or organization initiating the call within the first 25 seconds of the call and at the
15 conclusion of the call; or

16 (H) Such use involves calls to telephone numbers which at the request of the customer
17 have been omitted from the telephone directory published by the local exchange
18 company serving the customer or involves calls to hospitals, nursing homes, fire
19 protection agencies, or law enforcement agencies;

20 (3)(A) A person may give consent to a call made with ADAD equipment when a line
21 operator introduces the call and states an intent to play a recorded message. Any such
22 consent shall apply only to one particular call and shall not constitute prior consent to
23 receive further calls through the use of such ADAD equipment.

24 (B) Any person wishing to receive telephone calls through the use of ADAD
25 equipment shall give his or her written consent to the person using, employing or
26 directing another person to use, or contracting for the use of such ADAD equipment.
27 Any forms used for such written consent by any person using, employing or directing
28 another person to use, or contracting for the use of such ADAD equipment shall clearly
29 and conspicuously state its purpose and effect and clearly and conspicuously give
30 notice of how the consent may be withdrawn. A record of such written consent shall be
31 maintained by the person to whom consent is given and shall be made available to the
32 commission or its authorized representative, without further action, during normal
33 business hours and following reasonable notice. Such consent shall, unless withdrawn,
34 be valid for a period of two years from the date on which it is executed; and such record
35 of written consent shall be maintained by the person to whom consent is given for at
36 least the same period of time. Any consent to receive telephone calls through the use
37 of ADAD equipment shall be void and withdrawn on the fifteenth day following the

1 receipt of a letter withdrawing such consent. It shall be unlawful for any person to
2 whom written consent is given to fail to maintain the record of such written consent for
3 the time period required by this paragraph or to prevent or hinder the commission or its
4 authorized representative from inspecting any such record of written consent.

5 (b) It shall not be unlawful for any person to use, to employ or direct another person to use,
6 or to contract for the use of ADAD equipment in any manner covered by the provisions of
7 subparagraphs (a)(2)(B) through (a)(2)(G) of this Code section when:

8 (1) Calls are made with ADAD equipment by a nonprofit organization, or by an
9 individual using such calls other than for commercial profit-making purposes, and the
10 calls do not involve the advertisement or offering for sale, lease, or rental of goods,
11 services, or property, unless the person has objected to such calls pursuant to Code
12 Section 46-5-27;

13 (2) Calls made with ADAD equipment relate to payment for, service of, or warranty
14 coverage of previously ordered or purchased goods or services; or

15 (3) Calls made with ADAD equipment relate to collection of lawful debts.

16 (c) It shall be unlawful for any person to connect any ADAD equipment to any telephone
17 line in this state for the purpose of making telephone calls to persons in this state through
18 the use of ADAD equipment unless a permit has been issued for such ADAD equipment
19 by the commission. Any person desiring to use ADAD equipment in this state shall make
20 application for a permit to the commission on forms prescribed by the commission and
21 shall pay a fee as prescribed by the commission for such permit. Permits shall be renewed
22 biennially as prescribed by the commission and upon payment of a renewal fee. The fees
23 charged shall cover the administrative cost for the issuance of such permits. Permits shall
24 be subject to suspension or revocation for any violation of this Code section.

25 (d) The provisions of this Code section shall supersede any prior rule, regulation, or order
26 of the commission governing the use of ADAD equipment but shall not prohibit or
27 supersede any future rule, regulation, or order of the commission governing the use of
28 ADAD equipment except to the extent that any such rule, regulation, or order directly
29 conflicts with this ~~subsection~~ Code section. Except for criminal sanctions, the commission
30 is charged with the responsibility of enforcing this Code section; and the commission shall
31 require local exchange companies to file with the commission appropriate tariff revisions
32 to implement this subsection. Any person who operates or utilizes ADAD equipment in
33 violation of the provisions of this Code section shall be subject to disconnection of
34 telephone service if the violation does not cease within ten days from the date of
35 notification to such person by the local exchange company; and the tariff revisions filed by
36 local exchange companies shall provide for the giving of such notification by local
37 exchange companies and for such disconnection of service.

(e) Any person who violates any provision of this Code section shall be guilty of a misdemeanor."

SECTION 2.

Said chapter is further amended by striking Code Section 46-5-27, relating to telephone solicitations, and inserting in lieu thereof the following:

"46-5-27.

(a) The General Assembly finds that:

(1) The use of the telephone to market goods and services is pervasive now due to the increased use of cost-effective telemarketing techniques;

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers;

(3) Every day, over 300,000 solicitors place calls to more than 18 million Americans, including citizens of this state;

(4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy and peacefulness of individuals;

(5) Many citizens of this state are outraged over the proliferation of nuisance calls from telemarketers;

(6) Individuals' privacy rights and commercial freedom of speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices; and

(7) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telemarketing calls.

(b) As used in this Code section, the term:

(1) 'Caller identification service' means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to telephone service from a local exchange company or mobile or wireless telephone service provider or other persons living or residing with such person.

(3) 'Telephone solicitation' means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include communications:

(A) To any residential, mobile, or wireless subscriber with that subscriber's prior express invitation or permission;

(B) By or on behalf of any person or entity with whom a residential, mobile, or wireless subscriber has a prior or current business or personal relationship; or

(C) By or on behalf of a charitable organization which has filed a registration statement pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such registration as a religious organization or agency referred to in paragraph (2) of Code Section 43-17-2, except as otherwise provided in paragraph (2) of subsection (c) of this Code section.

Such communication may be from a live operator, through the use of ADAD equipment as defined in Code Section 46-5-23, or by other means.

(c) No person or entity shall make or cause to be made:

(1) Any ~~any~~ telephone solicitation; or

(2) Any solicitation of votes for candidates for public office through the use of ADAD equipment as defined in Code Section 46-5-23

to the telephone ~~line~~ of any residential, mobile, or wireless subscriber in this state who has given notice to the commission, in accordance with regulations promulgated under subsection (d) of this Code section, of such subscriber's objection to receiving such telephone solicitations.

(d)(1) The commission shall establish and provide for the operation of a data base to compile a list of telephone numbers of residential, mobile, and wireless subscribers who object to receiving telephone solicitations. It shall be the duty of the commission to have such data base in operation no later than January 1, 1999.

(2) Such data base may be operated by the commission or by another entity selected by and awarded a contract by the commission.

(3) No later than January 1, 1999, the commission shall promulgate regulations which:

(A) Require each local exchange company and mobile or wireless provider to inform its residential, mobile, or wireless subscribers of the opportunity to provide notification to the commission or its contractor that such subscriber objects to receiving telephone solicitations;

(B) Specify the methods by which each residential, mobile, or wireless subscriber may give notice to the commission or its contractor of his or her objection to receiving such solicitations and methods for revocation of such notice;

(C) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(D) Specify the methods by which such objections and revocations shall be collected and added to the data base;

(E) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the

1 telephone numbers of residential, mobile, or wireless subscribers included in the data
2 base; and

3 (F) Specify such other matters relating to the data base that the commission deems
4 desirable.

5 (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications
6 Commission establishes a single national data base of telephone numbers of subscribers
7 who object to receiving telephone solicitations, the commission shall include the part of
8 such single national data base that relates to Georgia in the data base established under
9 this Code section.

10 (e) The commission may provide by rule or regulation for administrative fees to be
11 imposed upon:

12 (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data
13 base established under this Code section; provided, however, that the commission shall
14 not set this fee in an amount greater than \$5.00; and

15 (2) A person or entity desiring to make telephone solicitations for access to or for
16 electronic copies of the data base established under this Code section.

17 (f)(1) Information contained in the data base established under this Code section shall
18 be used only for the purpose of compliance with this Code section or in a proceeding or
19 action under subsection (h) or (i) of this Code section. Such information shall not be
20 subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

21 (2) No person shall knowingly compile or disseminate or compile and disseminate
22 information obtained from the data base for any reason other than those legitimate
23 purposes established by law. Any person found guilty of violating this subsection shall
24 be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed
25 \$1,000.00. Each instance of an unauthorized disclosure of information from the data base
26 shall constitute a separate offense.

27 (g)(1) Any person or entity who makes a telephone solicitation to the telephone ~~line~~ of
28 any residential, mobile, or wireless subscriber in this state shall, at the beginning of such
29 call, state clearly the identity of the person or entity initiating the call.

30 (2) No person or entity who makes a telephone solicitation to the telephone ~~line~~ of a
31 residential, mobile, or wireless subscriber in this state shall knowingly utilize any method
32 to block or otherwise circumvent such subscriber's use of a caller identification service.

33 (h) The administrator appointed pursuant to subsection (g) of Code Section 10-1-395 shall
34 have authority to initiate proceedings, pursuant to Code Section 10-1-397, relating to a
35 knowing violation or threatened knowing violation of subsection (c) or (g) of this Code
36 section. Such proceedings include without limitation proceedings to issue a cease and desist
37 order, to issue an order imposing a civil penalty up to a maximum of \$2,000.00 for each

1 knowing violation, and to seek additional relief in any superior court of competent
2 jurisdiction. Such actions shall be brought in the name of the state. The provisions of Code
3 Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings initiated by the
4 administrator under this subsection. The administrator is authorized to issue investigative
5 demands, issue subpoenas, administer oaths, and conduct hearings in the course of
6 investigating a violation of subsection (c) or (g) of this Code section, in accordance with
7 the provisions of Code Sections 10-1-403 and 10-1-404.

8 (i) Any person who has received more than one telephone solicitation within any 12 month
9 period by or on behalf of the same person or entity in violation of subsection (c) or (g) of
10 this Code section may either bring an action to enjoin such violation; bring an action to
11 recover for actual monetary loss from such knowing violation or to receive up to \$2,000.00
12 in damages for each such knowing violation, whichever is greater; or bring both such
13 actions.

14 (j) It shall be a defense in any action or proceeding brought under subsection (h) or (i) of
15 this Code section that the defendant has established and implemented, with due care,
16 reasonable practices and procedures to effectively prevent telephone solicitations in
17 violation of this Code section.

18 (k) No action or proceeding may be brought under subsection (h) or (i) of this Code
19 section:

20 (1) More than two years after the person bringing the action knew or should have known
21 of the occurrence of the alleged violation; or

22 (2) More than two years after the termination of any proceeding or action by the State
23 of Georgia, whichever is later.

24 (l) A court of this state may exercise personal jurisdiction over any nonresident or his or
25 her executor or administrator as to an action or proceeding authorized by this Code section
26 in accordance with the provisions of Code Section 9-10-91.

27 (m) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive
28 and are in addition to all other causes of action, remedies, and penalties provided by law.

29 (n) No provider of telephone caller identification service shall be held liable for violations
30 of this Code section committed by other persons or entities."

31 **SECTION 3.**

32 All laws and parts of laws in conflict with this Act are repealed.